Supreme Court, U.S.
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No. 01-912

In The

SUPREME COURT OF THE UNITED STATES

Vishnue I. Jennings
Petitioner

vs.

KELLOGG COMPANY, LOCAL 50
AMERICAN FEDERATION OF GRAIN
MILLERS
Respondents

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
Eighth Circuit

Reply Brief in Opposition To American Federation of Grain Millers Local 50

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13pp

QUESTIONS PRESENTED

I. Whether summary judgment can be granted when discovery is not completed and there are genuine issues as to disputed material facts.

II. Whether the court in denying petitioner an appointed attorney when qualifying as a pauper under 28 U.S.C. 1915(d) violates Petitioner's due process of law and equal protection of the law under The Constitution of The United States of America, Bill of Rights XIV Amendment.

III. Whether the court erred in denying a demanded jury trial under The Constitution of The United States of America, Bill of Rights, VII Amendment and Fed.R.Civ.P. Rule 38(a), where there are disputed facts that violate Petitioner's due process of law and equal protection of the law.

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Petitioner, Vishnue I. Jennings, rebuts and responds to Respondent American Federation of Grain Millers, Local No. 50's Brief in Opposition and would further show unto the Supreme Court of The United States that the Federal District Court of Omaha, NE abused its discretion and applied the wrong law to the facts in this case in granting summary judgments motions for the Respondents American Federation of Grain Millers, Local No. 50 and Kellogg Company, USA at Omaha, NE. Petitioner will show unto the court why it is mandated to hear her Petition for Certiorari, grant the Petition for Certiorari and to dismiss and set aside the Order of the Eighth Circuit Court at Saint Louis, MO, and the Order of the Federal District Court of Omaha, NE and to order the Federal District Court at Omaha, NE to set a date certain for a jury trial, after completion of discovery.

REPLY TO OPINIONS BELOW

(1) Petitioner was not untimely in requesting a jury trial.
(2) Petitioner was a pauper at the time of filing this lawsuit.
(3) All discovery was not completed at the time that the respondents moved for summary judgment.
(4) By Respondents own admission, there were genuine issues of disputed material facts and discovery had not ended at the time that the respondents moved for summary judgment on November 29th, 1999. This is noted by the

many request for SUPPLEMENTS to the respondent's motion over a five month period ending May 10th, 2000 when the final pretrial finally ended discovery.

The Eighth Circuit Court of Appeals erred in finding for the Respondents and in affirming the District Court's order. It further erred in denying Petitioner's Motion for Rehearing and Rehearing en banc.

REPLY TO THE STATEMENT OF THE CASE

The respondent's statement of the case is totally erroneous and not based upon true facts of the case. The statement of the case in Petitioner's brief is the correct statement of the case as the record shows that there was no strike and there was no sabotage attributed to any act or non action of the petitioner by either the Kellogg Company or the Arbitrator. There has been no witnesses brought forward against petitioner and no evidence against petitioner has ever been produced. Allegations of sabotage and dismissal for same were merely a pretext to discriminate against petitioner. The acts of sabotage alleged against petitioner are a mechanical impossibility for which Petitioner was not afforded the opportunity to prove in an appeal of the decision of the arbitration due to the expressed discrimination of respondents. That is to say; when petitioner was not found guilty of any work rule violations, but was denied back pay, then denied her right to an appeal, the named respondents blocked petitioners right to due

process of law and further discriminated against her. Another question ripe for a jury to decide.

A. Reply to the Denial of A Jury

The District Court did not rule.

(1) Petitioner originally filed this case under a paupers oath and paupers status was granted by Judge Bernice Donald in the Federal District Court at Memphis, Tennessee, prior to venue being changed to Omaha, NE. There remained, before the court, the matter of ruling on the appointment of an attorney for petitioner. Petitioner does not now nor has she, at any time, claimed any legal expertise. The Federal District Court erred and abused its discretion in not ruling on petitioners petition for the appointment of an attorney, and todate the petition has not been ruled upon.

Eleven months into the case, petitioner demanded a jury trial while trying to defend herself to the best of her ability without the benefit of the attorney she had petitioned the court to appoint, while qualifying as a pauper. According to Fed.R.C.P. Rule 38, the demand for a jury trial had to be made before the filing of the last petition. There has been no last petition.

Because the court did not rule on petitioner's petition for the appointment of an attorney, she was deprived of her due process of law and equal protection of the laws secured to her by the Constitution Bill of Rights Fourteenth Amendment. The jury trial is a secured constitutional right, secured by the Seventh Amendment. This court also mandated in Reeves v Sanderson Plumbing Prod., 530 U.S. 133 that in discrimination suits facts could be presented to a

Seventh Amendment Constitutional Jury.

Petitioner is an African American Female and has a secured right under the Fourteenth Amendment and the Bill of Rights to due process of law and equal protection of the laws.

B. Reply to in Forma Paupers status being Dismissed.

The Federal District Court erred and abused its discretion in dismissing petitioner as a pauper, more than a year and one-half into this case, after petitioner had qualified under 28 USC §1915 and been accepted by the Federal District Court in Memphis, Tennessee. The motion to dismiss by respondent Kellogg Company, questioning petitioner's status as a pauper was not timely filed and the Federal District Court ex post facto[ed] her status a year and one-half into the case. The court should be aware that petitioner's status as a pauper was determined, at the time of the filing of the case, not a year and one-half later. Thus the Federal District Court abused its discretion and erred in removing petitioner's pauper status, which denied to her, her secured Fourteenth Amendment right to due process of law and equal protection of the laws.

The Federal District Judge ruled that he believed that the petitioner was a pauper at the time of the filing of the case, however, because the petitioner's status had changed, after a year and one-half, the court ordered the petitioner to pay the $150.00 filing fee to the United States District Court at Omaha, NE, even though the case was originally filed in the United States District Court for the Western District of Tennessee, petitioner complied with the order.

C. All Discovery was not completed at the time the Respondent's Moved For Summary Judgment.

Petitioner would show unto this Honorable Supreme Court the facts, the law and the rules, the court has mandated in the granting of a Motion For Summary Judgment. The congress of the United States of America mandated upon the Supreme Court of The United States, the authority to make the rules for the Supreme Court, the Appellate Courts and all Federal District Courts. The Authority is under 28 USC §2072.

The Supreme Court of The United States implemented the Federal Rules of Civil Procedure, which includes Rules No. 1 through No. 86.

Fed.R.C.P. Rule 56 mandates the provisions for securing a motion for summary judgment. The Supreme Court has mandated in the following case law, the provisions for securing a motion for summary judgment.

Anderson v Liberty Lobby, Inc. 477 U.S. 242
Celotex v Cantrett, 477 U.S. 317
Adickes v S.K. Kress and Co., 398 U.S. 144

The Supreme Court has mandated under Rule 56 and the above authority, that there cannot be a summary judgment granted if there is a genuine issue of disputed material fact, that discovery had to be completed, including depositions, interrogatories, admissions and production of documents.

The Eighth Circuit Court of Appeals at St. Louis, MO, abused its discretion in applying the wrong law and facts in upholding the Federal District Court at Omaha, NE's order of summary judgment for the respondents American Federation

of Grain Millers, Local No. 50 and the Kellogg Company USA, Omaha, NE and petitioner would show unto this court how the Federal District Court abused its discretion and erred in granting Summary Judgment to the named parties:

1. There were genuine issues of disputed material facts and discovery was still pending when both respondents moved for summary judgment on November 29th, 1999. The Rule 16 Final Pretrial Order finally stopped all discovery May 10th 2000. The respondents stated in their motions for summary judgment there were no genuine issues of disputed material facts and that discovery was completed. After the motion was filed, they then filed a motion for the taking of deposition of the petitioner and continued with production of documents while requesting permission of the court to supplement their motion for summary judgment. This additional discovery went on for over five (5) months with depositions and other aspects of discovery.

2. The Federal District Judge could not, as a matter in law, under Fed.R.C.P. Rule 56, allow the respondents to prevail on a motion for summary judgment wherein they stated that discovery was completed and there were no genuine issues of disputed material facts and then allow discovery to continue for over five (5) months with depositions and other aspects of discovery still pending.

3. There is no provisions under the Fed.R.C.P. Rule 56 for the filing of a motion for summary judgment and continuing with discovery for over five (5) more months. You either have a motion for summary judgment, filed according to the rules, or you do not. There are no provisions

for the supplementing of a motion for summary judgment and the continuing of discovery, after the motion has been filed. This is exactly what the Federal District Judge allowed in this case.

4. The Supreme Court is mandated to make sure that Rule 56 is followed in the granting of summary judgment by the cases stated herein, in this matter. Further, the Supreme Court is mandated to use it supervisory authority to make sure that the Federal District Court follows the guidelines of the Federal Rules of Civil Procedure, in particular Rule 56 and the mandated cases stated herein in granting summary judgments. In this case, the Federal District Judge, erred and abused his discretion and did not apply the law and the facts in granting summary judgment to the respondents.

5. The Supreme Court is now mandated to grant the petition for writ of certiorari of Vishnue I. Jennings.

D. There Were Genuine Issues of Disputed Material Facts Ripe For A Jury To Decide.

Under Title VII there are four (4) criteria to meet the burden of proof for summary judgment to be granted in a discrimination suit. Petitioner qualified under all four categories. The Respondents stipulated to three of the four categories and should have stipulated to the fourth, which would cause petitioner to win her case. Petitioner had the law and the facts in support of her position and the facts would have had to be determined by a jury, the trier of facts. Thus there could be no granting of a summary judgment if there were facts for a jury to decide.

Under Title VII, defendants are to be given an opportunity to give a nondiscriminatory reason for their adverse action against the plaintiff. No nondiscriminatory reason was ever requested by the court nor offered by the respondents. Thus, the Federal District Court erred again in granting summary judgment to the respondents by not adhering to the standard set forth under Title VII.

Mere assertions and speculations by the Federal District Court and the respondents that the petitioner could not prevail in proving her case of discrimination were questions to be presented to a jury. Petitioners right to due process of law was again short circuited by the court in its refusal to grant petitioner her day in court.

The Federal District Court assumed facts contrary to evidence and abused its discretion in granting summary judgment to the respondents as the petitioner clearly made the court aware that the respondents had breached the union contract and their fiduciary duty to the petitioner by not giving notice of a right to appeal the decision of the arbitrator or a notice to appeal to the negotiating committee or the executive board. Written notice is contractually the responsibility and duty of the respondent union. Petitioner presented the inaction's of the respondent union as part of the pretext to discriminate against her. Petitioner had received notice from respondent union of a right to appeal her first grievance and that appeal ended in arbitration, therefore the respondent union was well aware that notice of petitioner's right to appeal the decision of the arbitrator should have been given, instead respondent union's attroney told the petitioner that the decision was final so live with it.

The Federal District Court confirmed the petitioners charges of discrimination against the respondents in its Memorandum and Order[1] when it stated the deadline for filing an appeal of the decision of the Arbitrator was six months. No notice of a right to appeal the decision of the Arbitrator was produced, as in production of documents, and petitioner showed unto the Federal District Court a conflict of interest proffered by the Union Attorney. The Federal District Court allowed the respondents to prevail in summary judgment with all of these genuine issues of disputed material facts outstanding.

[1] See Memorandum and Order of The Federal District Court in Supplemental Appendix.

CONCLUSION

The honorable Supreme Court of The United States of America should grant petitioner's petition for writ of certiorari as the Supreme Court of The United States is an Article III Court and bound under Article VI Sec. 3, to secure to this African American Female Petitioner her due process of law and equal protection of the laws under the Fourteenth Amendment as justice cries out for the intervention and supervisory authority of this court in granting the petition for writ of certiorari.

Respectfully submitted,

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